

Responses to August 10, 2007, ESQ Article

Comments: I wonder how the commission and the Supreme Court will justify Rule 88.09 with regard to providing access to the courts. Now, in effect, we are saying, you can come to the court, but if you want to represent yourself in a dissolution proceeding, you have to jump through these other hoops to get there. What of a respondent--if they have no attorney? What if a person doesn't want to use the forms? What of when the local courts start developing their own forms, and you have a mess like the Order of Protection petitions? And you have a form approved by the Supremes, that isn't accepted by the lower courts? There are too many issues that aren't dealt with adequately to start making more rules about who can and cannot come to court. It's unwise to start this process to "help the courts out" when we know if something isn't quite right with the forms and the way they are filled out the courts won't tell the person what is wrong and how to fix it. Bad idea altogether.

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Comments: You have my comments and, though you apparently choose to ignore them, those of my brothers and sisters at the bar. In addition to the opposition that I already submitted, here are further thoughts. The course you have set for yourself with respect to the Pro Se pleadings and other assistance is a bad one that will bring many pro se litigants to harm. The reason for this is two-fold: First, it will lull them into a false sense of security, from the bowels of which they will overlook things that might avoid problems or problems that could be solved; and, second, it will often result in problems that haunt them later in life because they did not have proper representation, such as undivided or untransferred property or undistributed property due to the failure to take some necessary condition precedent for the finalization of distribution. This is nearly as much a folly as the advocacy of unbundled legal services from the havens of which an attorney has no clear idea of where his or her ethical duties lie. For instance, if an attorney is hired "just" to draft a petition for dissolution, does the attorney have a duty to tell the client what ramifications flow from the filing of the petition? People can afford representation if they call enough attorneys and work out payments. One can get an uncontested dissolution for anywhere from several hundred dollars to \$1500 depending on who one hires. We should be putting our time and energy into developing programs to help people procure attorneys and not to helping them represent themselves. Would a person who cannot afford a surgeon cut out his or her own appendix? And, worse, would the AMA enable them to do so? Finally, but not necessarily of the last importance, there is the bad impression that these efforts will give two groups of people --those who use the forms and end up with a mess, and those who pay for a lawyer and think they could have gotten "free help" and are resentful. This is not to even consider the "legal advice" that clerks will be required to give, whether or not you call it legal advice. A just war is still just, and its victims are just as dead. This is a bad business. The people developing this seem totally out of touch with the real world. It is unfortunate that such important considerations are left in the hands of an elite few.

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Comments: I would like to commend the pro-se commission on their work in attempting to provide lower-income individuals and families with the information necessary to help themselves to the greatest extent possible. There will always be nay-sayers who are more concerned with protecting their own pocketbooks than actually solving problems. They fail to realize that the people who will utilize the information and forms prepared by the commission are not, and never would have been, their clients. There are no easy answers to all of the issues which may arise in this area, but the commission's decision to roll up their collective sleeves and address the issues in a practical manner is certainly more productive and desirable than sitting on your hands and yelling about the problems that haven't been solved yet.

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Comments: I am very concerned that the recommendations will put an overwhelming burden on the clerks of the Circuit Court. Our clerks do not have the knowledge to accurately assist the pro se litigants. Also with the increased workload that we have in our County and the hiring freeze, our clerks do not have the time to adequately assist the pro se litigants. I have spent much time advising our clerks to not give legal advise as they are not lawyers who have the training to give legal advise. I believe that we are opening a can of worms. Our lawyers have done a good job of assisting those persons who can't pay full fees by discounting fees. I believe that those that cannot afford legal services in family law are much better served with our present system than the proposed system. St. Louis may have the staff numbers and knowledge to provide this type of service, but we do not. I do certainly acknowledge that this is a problem to be addressed, but I do not believe that having court clerks give what I perceive to be legal advise is the answer. Just my personal thoughts

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